



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner
FINAL DECISION AND CONDITIONS

June 9, 2016

Pamela G. Monroe, Administrator
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301


Re: Joint Application of New England Power Co (d/b/a National Grid) and Public Service
Co. of NH (d/b/a Eversource Energy) for Merrimack Valley Reliability Project
NH Site Evaluation Committee Docket No. 2015-05

Dear Ms. Monroe:

This letter is to notify you that the New Hampshire Department of Environmental Services (DES) Water Division staff have completed their technical review of the subject application and have made a final decision on the parts of the application that relate to DES permitting or regulatory authority relative to an Alteration of Terrain permit, Wetland permit, and 401 Water Quality Certificate. DES recommends approval of the application with the conditions that are enclosed with this letter.

This concludes DES review of the project which we hope will assist the SEC to complete its project evaluation process and render a final decision. If you have any questions, please contact me at 271-2951 or email at: Rene.Pelletier@des.nh.gov

Sincerely,


for Rene Pelletier, Assistant Director
Water Division

cc: Michael J. Iacopino, Counsel NHSEC
Brian Buonamano, Asst. Attorney General, NH Department of Justice
Thomas S. Burack, Commissioner, NHDES
Clark Freise, Asst. Commissioner, NHDES
Eugene J. Forbes, Water Division Director, NHDES

401 WATER QUALITY CERTIFICATION – FINAL CONDITIONS

FINAL 401 WATER QUALITY CERTIFICATION CONDITIONS:

The proposed Activity¹ involves the discharge of dredge or fill material into surface waters of the U.S. and, therefore, requires a federal Clean Water Act (CWA) Section 404 (33 U.S.C. 1344) permit from the U.S. Army Corps of Engineers (Corps). In accordance with Section 401 of the CWA (33 U.S.C. 1341) and New Hampshire (NH) statute RSA 485-A:12, III, the Activity therefore requires a Section 401 Water Quality Certification from the NH Department of Environmental Services (NHDES or DES).

On February 24, 2016, the Corps indicated that the Section 404 general permit (i.e., the New Hampshire Programmatic General Permit or PGP) applies to the proposed Activity. The Corps issues PGPs every five years; the last PGP was issued in 2012. A 401 Water Quality Certification (WQC # 2012-404P-002) for the current PGP was issued by NHDES on August 2, 2012. WQC # 2012-404P-002 is applicable to all activities covered by the PGP. Since the proposed Activity is covered by the PGP, the Applicant¹ for the proposed Activity must comply with the conditions of WQC #2012-404P-002, which are provided below:

E-1. Construction or operation of all projects included under the PGP shall meet NH surface water quality standards.

E-2. Applications for projects included under the PGP shall be subject to DES review to determine whether additional conditions or an individual 401 Certification application is necessary to ensure compliance with surface water quality standards.

E-3. If DES determines that surface water quality standards are being violated by the specific project or there is reasonable potential to expect that water quality standards will be violated if more project specific conditions are not included in the 401 Certification, DES may modify this 401 Certification for the specific project to include additional conditions to ensure compliance with surface water quality standards.

E-4. Construction on any specific project permitted under the PGP shall not commence until all other applicable permits and approvals have been granted, including those permits issued through DES Wetlands Bureau and, if necessary, DES Alteration of Terrain Program.

E-5. All applicable conditions in the NH PGP shall be followed.

E-6. DES reserves the right to inspect any project permitted under the PGP and the effects of the project on affected surface waters at any time to monitor compliance with the NH surface water quality standards.”

¹ The Applicant is New England Power Company d/b/a National Grid (NEP) and Public Service Company of New Hampshire (PSNH) d/b/a Eversource Energy (collectively Applicant). The proposed Activity is described in the application submitted to the New Hampshire Site Evaluation Committee on August 5, 2015, which included an application and supplemental information for 401 Water Quality Certification, the Alteration of Terrain Permit and the Wetlands Permit.

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NHDES has reviewed the information provided by the Applicant¹ and has determined that compliance with WQC #2012-404P-002 issued in 2012, and the conditions for the Alteration of Terrain and Wetlands permits, provides reasonable assurance that construction and operation of the Activity will not violate surface water quality standards².

² New Hampshire surface water quality standards are included in statute (RSA 485-A:8) and regulation (Env-Wq 1700).

WETLANDS BUREAU FINAL DECISION

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:

PROJECT DESCRIPTION:

Dredge and fill 4,428 square feet of wetlands and 80 square feet of streams (impacting 17 linear feet) and temporarily impact 8.86 acres (385,896 square feet) of wetlands and 6,365 square feet (610 linear feet) within streams to construct 17.9 miles of new overhead 345kV electric transmission line (known as the 3124 Line) and relocation of 7.6 miles an existing 115kV electric transmission line (known as the Y-151 Line). All work will be conducted within an existing utility right-of-way. Compensatory mitigation for permanent and US Army Corps of Engineers wetland impacts consists of a one-time payment of \$12,898.60 dollars into the Aquatic Resource Mitigation Fund ("ARM") by New England Power Company d/b/a National Grid and a one-time payment of \$633,976.80 dollars into the ARM Fund by Public Service of New Hampshire d/b/a Eversource. In addition, the conservation of 5.53 acres of land comprising part of a parcel owned by NEP (Tax Map 30, Lot 7-11) shall be conveyed in fee to the Town of Pelham as a component of the mitigation and added to the abutting Peabody Town Forest in the Town of Pelham.

PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with plans dated 5/29/2015 and 7/6/2015, as received by the NH Department of Environmental Services (DES) on August 14, 2015.
2. This approval is not valid until DES receives a one-time payment of \$12,898.60 dollars into the Aquatic Resource Mitigation Fund ("ARM") by New England Power d/b/a National Grid and a one-time payment of \$633,976.80 dollars into the ARM Fund by Eversource.
3. A NH Certified Wetland Scientist or similarly qualified professional shall monitor the project during construction to assure it is constructed in accordance with the approved plans and narratives and to assure no water quality violations occur. A follow-up report shall be submitted to the Wetlands Bureau within 60 days of the completion of construction and after one full growing season.
4. The permittee shall notify and coordinate with NH Natural Heritage Bureau (NHB) and NH Fish & Game Department (NHF&G) to the satisfaction of the agencies, encounters with any rare, threatened, or endangered species during the project. Contractors shall avoid moving or disturbing any of the species.
5. A follow-up report shall be submitted to NHB and NHF&G within 60 days of the completion of construction if rare, threatened, or endangered species are found within the project area.
6. A NH Certified Wetland Scientist or similarly qualified professional shall walk the areas of proposed activity and the wetland impact areas, in particular, prior to ground disturbance each day to check swamp mats for basking turtles and snakes. Animals shall be safely relocated if found.
7. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
8. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as

far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.

9. All dredged and excavated material and construction-related debris shall be placed outside of the areas subject to RSA 482-A. Any spoil material deposited within 250 feet of any surface water shall comply with RSA-483-B.
10. All temporary wetland and stream bank impact areas shall have at least 75% successful establishment of wetlands vegetation (or where applicable appropriate stream bank vegetation) after one full growing season, or it shall be replanted and re-established in a manner satisfactory to the DES Wetlands Bureau.
11. Extreme precautions shall be taken within riparian areas to prevent unnecessary removal of vegetation during construction.
12. Equipment used in wetlands shall be placed on temporary swamp mats so as to minimize rutting of the soils. Swamp mats shall be removed immediately upon completion of work as not to result in permanent impacts.
13. The proposed temporary stream crossings shall span the natural stream channel and not impede stream flows.
14. Mulch used within any wetland/stream bank restoration areas shall be natural straw or equivalent non-toxic, non-seed-bearing organic material.
15. Any erosion control matting used shall be wildlife friendly.
16. Seed mix used within the restoration areas shall be a wetland seed mix appropriate to the area and shall be applied in accordance with manufacturers' specifications.
17. Precautions shall be taken to prevent import or transport of soil or seed stock containing nuisance or invasive species such as Purple Loosestrife, Knotweed, or Phragmites. The contractor responsible for work shall appropriately address invasive species in accordance with the NHDOT Best Management Practices for Roadside Invasive Plants (2008).
18. To prevent the introduction of invasive plant species to the site, the permittee's contractor(s) shall clean all soils and vegetation from construction equipment and matting before such equipment is moved to the site.
19. The permittee shall control invasive plant species such as Purple loosestrife (*Lythrum salicaria*) and Common reed (*Phragmites*) by measures agreed upon by the DES Wetlands Program if any such species is found in the stabilization areas during construction or during the early stages of vegetative establishment.
20. Within three days of final grading or temporary suspension of work, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
21. Construction equipment shall be inspected daily for leaking fuel, oil, and hydraulic fluid prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
22. All refueling of equipment shall occur outside of surface waters or wetlands during construction. Machinery shall be staged and refueled in upland areas only.
23. Faulty equipment shall be repaired immediately prior to entering areas that are subject to RSA 482-A jurisdiction.
24. The permittee's contractor shall maintain appropriate oil/diesel fuel spill kits on site that are readily accessible at all times during construction, and shall train each operator in the use of the kits.

25. The contractor responsible for completion of the work shall use techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
26. Any further alteration of areas on this property that are subject to RSA 482-A jurisdiction will require a new application and further permitting.
27. This permit is contingent upon the execution of conservation restrictions on 5.53 acres of land in Pelham as depicted on plans and information prepared by VHB as received by DES on February 16, 2016.
28. The 5.53 acres of land in Pelham shall be conveyed in fee ownership to the Town of Pelham within 120 days of the issuance of the New Hampshire Site Evaluation Committee decision.
29. The draft deed of the parcel to be conveyed to the Town of Pelham shall be provided to DES for review and approval.
30. Following permit issuance and prior to recording of the conservation deed, the natural resources existing on the 5.53 acre parcel shall not be removed, disturbed, or altered without prior written approval of DES.
31. The conservation deed to be placed on the preservation area shall be written to run with the land, and both existing and future property owners shall be subject to the terms of the restrictions.
32. The plan noting the conservation area with a copy of the final deed language shall be recorded with the Registry of Deeds Office for each appropriate lot. A copy of the recording from the County Registry of Deeds Office shall be submitted to the DES Wetlands Bureau within 14 days of the recording.
33. A final baseline documentation report shall be prepared that summarizes existing conditions within the conservation area. Said report shall contain photographic documentation of the easement area, and shall be submitted to the DES and Town of Pelham to serve as a baseline for future monitoring of the area.
34. The conservation area shall be surveyed by a licensed surveyor, and marked by monuments [stakes].
35. The Wetlands Bureau shall be notified of the placement of the parcel boundary monuments to coordinate on-site review of their location.
36. There shall be no removal of the existing vegetative undergrowth within the conservation area and the placement of fill, construction of structures, and storage of vehicles or hazardous materials is prohibited.
37. Activities in contravention of the conservation easement shall be construed as a violation of RSA 482-A, and those activities shall be subject to the enforcement powers of DES (including remediation and fines).

FINDINGS:

1. This project is considered a Major Project per NH Administrative Rule Env-Wt 303.02(c), as the total wetland impacts (permanent and temporary) are greater than 20,000 square feet.
2. The need for the proposed impacts has been demonstrated by the applicant per Rule Env-Wt 302.01.
3. The applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03.

4. The applicant has demonstrated by plan and example that each factor listed in Rule Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
5. The applicant has provided upland buffer preservation in the form off-site compensatory mitigation for the prime wetland impacts in accordance with Env-Wt 703.01(b)(5) and Env-Wt 703.02(b)(2)
6. The applicant has reviewed on-site options for mitigation and the department has determined that this project is acceptable for payment to the Aquatic Resource Mitigation (ARM) Fund.
7. As required by the US Army Corps of Engineers mitigation guidance, the payment calculated for permanent, temporary and secondary impacts due to forest conversion impacts equals \$646,875.40.
8. The Department decision is issued in letter form and upon approval by the NH Site Evaluation Committee, and receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Rule Env-Wt 803.08(f).
9. The payment into the ARM fund shall be deposited in the DES fund for the "Merrimack River" watershed per RSA 482-A:29.
10. Public hearing is not required with the finding that the project will not impact wetland areas that are considered to be of special value from a local, regional, or state perspective pursuant to Rule Env-Wt 101.96.

ALTERATION OF TERRAIN BUREAU FINAL DECISION

PROJECT SPECIFIC CONDITIONS:

1. Activities shall not cause or contribute to any violations of the surface water quality standards established in Administrative Rule Env-Wq 1700.
2. Revised plans shall be submitted for an amendment approval prior to any changes in construction details or sequences. The NHDES must be notified in writing within ten days of a change in ownership.
3. The NHDES must be notified in writing prior to the start of construction and upon completion of construction. Forms are available at:
<http://des.nh.gov/organization/divisions/water/aot/categories/forms.htm>.
4. All activities shall comply with the plans and information provided with: the Alteration of Terrain application submitted as part of the application to the New Hampshire Site Evaluation Committee (SEC) on August 5, 2015; Supplement 2 of the SEC Application dated December 23, 2015; and the applicants' response to NHDES dated April 4, 2016, and the conditions provided below. Any proposed modifications which may affect surface water quality or quantity, shall receive NHDES approval prior to implementation.
5. All activities shall comply with the following documents regarding Best Management Practices (BMP):
 - *Best Management Practices for Utility Maintenance In and Adjacent to Wetlands and Waterbodies in New Hampshire*. New Hampshire Department of Resources and Economic Development. Interim January 2010. (Appendix S in the application submitted to the Site Evaluation Committee on August 5, 2015.)
 - *The National Grid Guidance Document (EG-303NE)* (Appendix T in the application submitted to the Site Evaluation Committee on August 5, 2015.)
 - *Construction Access Plan, Merrimack Valley Reliability Project*. VHB. May 8, 2015. (Appendix U in the application submitted to the Site Evaluation Committee on August 5, 2015.)
6. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
7. The Applicant shall identify to NHDES all marshalling yards, laydown areas, and off-right-of-way accessways not currently identified for review prior to their construction.
8. The Applicant shall comply with the "Construction Sequence", "Erosion Control", "Construction" and "Winter Construction Notes" included in the application for Alteration of Terrain Permit. This includes, but is not limited to, the type and installation method for erosion and sediment controls, inspection and maintenance of erosion controls; limiting unstabilized disturbed areas to no more than five acres at any time; soil stabilization, and dewatering.
9. The Applicant shall comply with requirements of the EPA NPDES Construction General Permit (CGP) including, but not limited to, preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) and inspection, maintenance and reporting of construction activity. A copy of the SWPPP and/or construction inspection and maintenance logs shall be provided to NHDES within seven days (or other timeframe acceptable to NHDES) of receiving a request from NHDES.

10. Concrete and concrete washout water shall be managed in accordance with Section 4.2 of the *National Grid Guidance Document (EG-303NE)*.
11. Removal of vegetation within 50 feet of all surface waters (including wetlands) shall be minimized to the maximum extent practicable to reduce the potential for erosion and deposition of material into the surface waters, to protect rare, threatened and endangered species and habitats and to minimize the potential for increases in water temperature increases that could be harmful to aquatic life. Limits of clearing will be clearly marked in the field prior to construction to prevent inadvertent excursion of clearing beyond what is necessary.
12. The Applicant shall minimize use of all pesticides to the maximum extent practicable and shall comply with all applicable state, federal and local laws and regulations regarding application of pesticides, including, but not limited to, Pes 1001.01 and 1001.02. If requested by NHDES, the applicant shall provide NHDES with a list of pesticides applied, the name of the applicator and their NH pesticide license or permit number within 30 days of receiving the request.
13. This permit does not relieve the Applicant from the obligation to obtain other local, state or federal permits that may be required (e.g., from US EPA, US Army Corps of Engineers, etc.). Projects disturbing over 1 acre may require a federal stormwater permit from EPA. Information regarding this permitting process can be obtained at: <http://des.nh.gov/organization/divisions/water/stormwater/construction.htm>.
14. The smallest practical area shall be disturbed during construction activities.
15. The Applicant shall employ the services of an environmental monitor ("Monitor"). The Monitor shall be a Certified Professional in Erosion and Sediment Control or a Professional Engineer licensed in the State of New Hampshire and shall be employed to inspect the site from the start of alteration of terrain activities until the alteration of terrain activities are completed and the site is considered stable.
16. During this period, the Monitor shall inspect the subject site at least once a week, and if possible, during any ½ inch or greater rain event (i.e. ½ inch of precipitation or more within a 24 hour period). If unable to be present during such a storm, the Monitor shall inspect the site within 24 hours of this event.
17. The inspections shall be for the purposes of determining compliance with the permit. The Monitor shall submit a written report to the NHDES within 24 hours of the inspections. The reports shall describe, at a minimum, whether the project is being constructed in accordance with the approved sequence, shall identify any deviation from the conditions of this permit and the approved plans, and identify any other noted deficiencies.
18. The Monitor shall provide technical assistance and recommendations to the Contractor on the appropriate Best Management Practices for Erosion and Sediment Controls required to meet the requirements of RSA 485-A:17 and all applicable NHDES permit conditions.
19. Within 24 hours of each inspection, the Monitor shall submit a report to NHDES via email (to Ridgely Mauck at: ridgely.mauck@des.nh.gov).
20. Unless otherwise authorized by NHDES, the Applicant shall keep a sufficient quantity of erosion control supplies on the site at all times during construction to facilitate an expeditious (i.e., within 24 hour) response to any construction related erosion issues on the site.